

MEMORANDUM OF UNDERSTANDING AND AGREEMENT

1. **Parties.** This Memorandum of Understanding and Agreement (“MOU”) is made and entered into by and between Expedia, Inc. (“Expedia”) and the City and County of Honolulu (the “City” and collectively, the “Parties”).

2. **Purpose.** The purpose of this MOU is to establish a cooperative and mutually acceptable “Notice and Takedown” operating agreement between Expedia and the City that will allow Expedia to continue offering listing services for legal short-term rentals within the City and assist the City in enforcing its short-term rental laws by eliminating unpermitted short-term rentals from the online marketplace.

3. **Definitions.** Unless otherwise specified, capitalized terms in this MOU have the same meaning as provided in the City’s Land Use Ordinance (“LUO”), which is codified as Chapter 21 of the Revised Ordinances of Honolulu, 1990 (*as amended*) (“ROH”). Capitalized words in this MOU that are not defined by the LUO are defined below or in the parenthetical text of this MOU. All other words in this MOU are to be construed according to their plain and ordinary meaning, unless clearly otherwise intended by the Parties, based on context.

A. “B&B” means a bed and breakfast home, as defined by the LUO.

B. “Land Use Ordinance” or “LUO” means Chapter 21 of the Revised Ordinances of Honolulu, 1990 (*as amended*).

C. “List” or “Listing” means the publication or dissemination of an advertisement for a STR or offering a STR for short-term rent using a website, application, platform, or other technologies.

D. “Partner” means a person who uses Expedia’s platform or services to offer a STR for short-term rent.

E. “Person” includes natural persons and any legal or business entities that may be treated as having the rights of a persons under the law; such legal and business entities include, without limitations: corporations, limited liability corporations, limited liability partnerships, associations, unincorporated associations, partnerships, and trusts.

F. “Platform” means any technologies that are used, alone or in combination with other technologies, to list an STR for short-term rent.

G. “Short-term” means less than thirty consecutive days.

H. “Short-term rental” or “STR” means a bed and breakfast home or transient vacation unit, as defined by the City Land Use Ordinance.

I. “TVU” means a transient vacation unit, as defined by the LUO.

4. **Term.** This MOU is an at-will agreement by and between the Parties. Therefore, either Party may terminate this MOU, with or without cause, subject to 30 days prior written notice. In the event that this MOU is terminated, the Parties shall be returned to the legal positions they occupied prior to the execution of this MOU, and Expedia will be provided sixty days to achieve compliance with all applicable requirements of the City Land Use Ordinance before the City seeks civil fines or penalties against Expedia for violations of the same.

5. **Operating Agreement.**

A. **Mandatory Field.** Within 90 days of the effective date of this MOU, Expedia will create and implement two mandatory fields for B&B and TVU Listings on its Platform(s). The mandatory fields will require Partners Listing a property as a B&B or TVU on Expedia’s Platform to provide the City-issued Tax Map Key (“TMK”) number for the listed property and the Partner’s Transient Accommodations Tax License Number (“TAT”) issued by the State of Hawai‘i.

TMK numbers provided by Expedia's Partners will include all digits assigned by the City, and TAT numbers will include all digits assigned by the State of Hawai'i. In addition, the instructions for Expedia's listing flow will direct Partners that are listing a TVU or B&B on Expedia's Platform to identify the unit number for the property in the property description of the listing if: (1) the property is located in an apartment building, multifamily dwelling, cooperative, or other development with more than one dwelling unit per zoning lot (Multi-Unit Development) and (2) the last four digits of the property's TMK number does not correspond to the property's unit number.

Expedia's Partners will be instructed to keep the TMK numbers and unit numbers (when required) for B&Bs and TVUs listed on Expedia's Platform up to date and accurate at all times.

B. Display of Mandatory Fields Data. Expedia will display the Partner-provided TMK number and TAT number in the Partner's publicly facing property Listing in lieu of the partner's non-conforming use certificate number, address, and/or B&B registration number. The Partner-provided TMK and TAT numbers will be shown in a clear and conspicuous manner.

C. Listing Removal for Failure to Include Number. When the mandatory fields are implemented 90 days after the effective date of this MOU, Expedia will not allow any new TVU or B&B Listings to appear on its Platform without a Partner-provided TMK number and TAT number. Partners with existing STR Listings on Expedia's Platform will have 60 days from the implementation of the mandatory fields under Section 5.A of this MOU, or 60 days from the City Department of Planning and Permitting's ("DPP") issuance of the first B&B registration, whichever is later, to enter their TMK and TAT numbers in their Listings.

On the 61st day after implementation of the mandatory fields or on the 61st day after DPP issues the first B&B registration, whichever is later, Expedia will deactivate any TVU or B&B Listing on its Platform that does not state the TMK number for the property and the Partner's TAT number. Listings that are deactivated under this Section of the MOU may be reactivated upon the addition of the TMK number for the property and the Partner's TAT number.

D. Link to County Information. Expedia will display a link to the County's licensing and information webpage in close proximity to the mandatory field as part of the Partner onboarding process. That webpage is: <http://www.honolulu.gov/dppstr.html>. The City will be solely responsible for the content of this webpage and may modify or change the content of this page at any time, and in any manner that it deems appropriate.

E. Owner Education. Before the mandatory fields are launched, Expedia will communicate to partners regarding the City's requirements, including the relevant requirements established by this MOU.

F. Monthly Reports. On the last business day of each month, Expedia will send a report to the City that includes the URL and Partner provided TMK number for each property listed on its Platform as a B&B or TVU. The first report due under this Section will be submitted to the City 30 days after the close of the implementation period for the entry of TMK and TAT numbers for existing Listings as described in Section 5.C of this MOU.

G. Deactivation of Listings. Starting after Expedia sends the first monthly report described in Section 5.F, the City DPP may notify Expedia of TVUs and B&Bs that have been issued a Notice of Violation for advertising or operating an unpermitted TVU or B&B. DPP will not send more than two notifications per month, but each notification may identify multiple listings or properties. Notifications should be sent to: HonoluluCountySupport@expedia.com.

Expedia will remove the Listing(s) associated with the properties identified by DPP's notice within 7 days of receiving such notice from DPP and will not allow the relisting of the property without the prior written consent of DPP.

DPP will not unreasonably withhold relisting clearances for properties that are determined to be eligible for short-term rental by the City Zoning Board of Appeals or any court of competent jurisdiction.

H. Safe Harbor. In exchange for Expedia's compliance with the terms and conditions of this MOU, the City will not initiate an enforcement action against Expedia or seek civil penalties against Expedia for violations of Ordinance 19-18.

Upon execution of this MOU, Expedia will be considered to be registered as a hosting platform in compliance with Ordinance 19-18. If this MOU is terminated by either party for any reason, Expedia will be allowed up to 60 days from the date of termination to formally register itself as a hosting platform with DPP.

6. General Provisions.

A. Applicable law. This MOU is made under, and shall be interpreted in accordance with the laws of the City and the City and County of Honolulu, the State of Hawai'i, and the United States of America, as applicable.

B. Amendments. This MOU may be modified or amended at the mutual discretion of the parties by written amendments signed by both Parties.

C. Hosting Platform Parity. Expedia expects that the City will adopt policies and practices regarding Hosting Platforms that are consistent industry wide.

If the City enters into an agreement with another Hosting Platform that lists properties in the City and County of Honolulu, Expedia may request, and, the City shall approve, revisions to this

MOU to conform its provisions to any MOU with a Hosting Platform that Expedia views as more beneficial to the platform than this MOU.

The City will provide notice to Expedia if it reaches agreements with other Hosting Platforms. The City will also provide copies of any such agreement to Expedia within five days of its execution by the City.

D. Meet-and-Confer. If either Party believes that the other is not complying with any of the provisions set forth in this MOU, it shall notify the other and the parties shall meet and confer in good faith to resolve any dispute. Both Parties shall provide one another with reasonable time to resolve or cure any alleged violation or non-compliance of this MOU.

E. Effective Date. This MOU will become effective upon the signature of both Expedia and the City (Effective Date).

F. Confidentiality. Subject to compliance with the Hawai'i Uniform Information Practices Law, Chapter 92F, HRS, the City agrees that drafts, discussions, and negotiations leading up to the final, executed MOU will remain confidential to the extent permitted by Hawai'i law. If the City receives a public records request for disclosure of such documents or records, the City will use its best efforts to provide Expedia with notice at least 10 days prior to fulfilling the request.

G. Entirety of Agreement. This MOU, consisting of 8 pages, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations and/or agreements, whether written or oral.

H. Severability. Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

I. Third Party Beneficiary Rights. The parties do not intend to create in any other Person the status of a third party beneficiary. This MOU shall not be construed so as to create such status or rights in Persons who are not a party to this MOU. The rights, duties and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the benefit of the Parties to this MOU.

J. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The parties will accept emailed PDFs of signature pages.

K. Geographic Scope. This MOU and the obligations imposed on the Parties, are limited to Transient Vacation Units and Bed and Breakfast Homes located within the legal boundaries of the City and County of Honolulu, State of Hawai'i.

L. Contact and Notice Information. Unless otherwise specified, all notices and other communications related to the administration of this MOU will be in writing and delivered to the parties using the following email addresses and physical addresses:

Expedia:

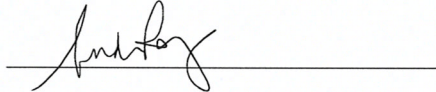
Expedia, Inc.
1111 Expedia Group Way W.
Seattle, WA 98119
Email: aniemann@expediagroup.com
Attention: Angela Niemann
Senior Vice President
Expedia, Inc., Legal & Corporate Affairs

The County:

Department of Planning and Permitting
650 South King St., 7th Floor
Honolulu, Hawai'i 96813
Email: etakahashi@honolulu.gov
Attention: Eugene H. Takahashi
Second Deputy Director

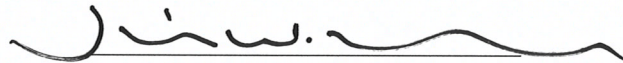
IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers.

Expedia:
Expedia, Inc.



By
Name: Amanda Pedigo
Title: Vice President, Government &
Corporate Affairs, North America
Date: November 18, 2020

The City & County of Honolulu:



By
Name: Kirk Caldwell
Title: Mayor
Date: November __, 2020